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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/505,713	02/17/2000	Wilfried Jud		6931

7590

03/25/2002

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EXAMINER

JACKSON, MONIQUE R

ART UNIT

PAPER NUMBER

1773

DATE MAILED: 03/25/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No. 09/505,713	Applicant(s) JUD ET AL.	
Examiner Monique R Jackson	Art Unit 1773	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 February 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.

Claim(s) objected to: NONE.

Claim(s) rejected: 15-19,21,22,27-29 and 32-37.

Claim(s) withdrawn from consideration: NONE.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

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ADVISORY ACTION

Continuation of Item No. 5 – The Applicant's request for reconsideration filed 2/25/02 has been considered but is not persuasive. The Applicant argues that the Examiner's interpretation of Breitler et al is incorrect, that nowhere does Breitler et al disclose a polypropylene layer between a metal layer and a polyamide layer, and that the recitation at Col. 4 of Breitler et al only teaches polypropylene layers on the outer sides of the composite and not between the polyamide layer and the metal layer. However, the Examiner maintains her position with regards to Breitler et al and specifically points to lines 36 to 44 of Column 4 of Breitler which read:

“A single or double-sided sealable composite is obtained by single or **double sided coextrusion of the plastic layers with e.g. a polypropylene/polyethylene copolymer.**

In that connection it is useful for the plastic layers to contain or comprise of a polyamide-based thermoplastic to feature a sealing layer on at least one side i.e. **each layer of polyamide-based thermoplastic may be covered with a sealable layer on one or both sides, independent of the other layers.**” (Emphasis added.)

This recitation clearly states that **each layer** of polyamide may be provided on **one or both sides** with a sealable layer, or polypropylene per Col. 4, line 24, independent of the other layers, **not** that each layer of polyamide may be provided **only on one side** with a sealable layer such that the composite is provided with an outerlying sealable layer on one or both sides as interpreted by the Applicant. Hence, the Examiner maintains her position that the invention taught by Breitler et al does in fact teach the instantly claimed invention having the structure polyamide plastic layer/metal layer/polyamide plastic layer wherein **each polyamide plastic layer** may be provided on one or both sides with a sealable polypropylene/polyethylene layer

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independent of other layers by coextrusion, hence resulting in pp/pa/pp/metal foil/pp/pa/pp, and further notes that her interpretation is **consistent** with what is understood in the packaging art, note specifically, the attached Muggli (USPN 5,968,663, commonly owned to Alusuisse Technology & Management) which also utilizes the same language as the commonly assigned Breitler et al and further exemplifies polyethylene/polypropylene "sealable layers" (c, c¹, e and e¹) on both sides of the plastic layers (d and d¹), which are present on both sides of a central metal layer (a) (Abstract; Col. 3, line 42-Col. 4, line 2; Col. 4, line 57-8.)

With regards to Applicant's arguments regarding Ullman, the Applicant has pointed to a particular sentence in Ullman that recites, "Special heat-sealable, polyolefin-based layers result in composite films that can be separated by peeling" and states that this sentence teaches away from the instant invention. However, the Examiner does not see where the polypropylene taught by Breitler et al is a "**Special** heat-sealable, polyolefin-based layer" as taught by Ullman, emphasis on "Special", and hence takes the position that this particular sentence in Ullman cannot be combined with the invention taught by Breitler et al as a teaching away from the instant invention. Further, it would have been obvious to one skilled in the art to recognize that the peeling referred to by Ullman is with regards to a sealed packaging film wherein two sealable surface layers of "special heat-sealable, polyolefin-based" materials are heat-sealed to **one another** to produce the packaged item which can be peeled apart to open the package, and hence does not provide any teaching away from the invention taught by Breitler et al. The Examiner only relied on Ullman to support her statement that extrusion laminating, lamination coating via adhesives, and coextrusion are conventional and well known methods of producing multilayer

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composite films and hence would have been obvious to one having ordinary skill in the art at the time of the invention.

Therefore, the Examiner maintains her position with regards to the rejections recited in the prior office action wherein Breitler et al does teach polypropylene layer(s) between the polyamide plastic layer(s) and the metal layer as previously discussed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R Jackson whose telephone number is 703-308-0428.

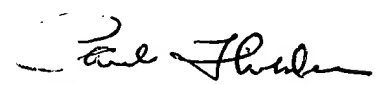
The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul J Thibodeau can be reached on 703-308-2367. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



mrj
March 21, 2002



Paul Thibodeau
Supervisory Patent Examiner
Technology Center 1700